The Executor is entitled to come to Court and obtain the advice and instructions of the Court and there is no suggestion that he has acted in any way that makes him personally responsible for the costs of his application: the defendants, too, are entitled to costs. Costs of both parties will therefore come out of the estate.

No Order.

HAJI ABDULLAH BIN MOHAMED v. ABDUL MAJID BIN IBRAHIM AND OTHERS.

[Orig. Civil Juris. (Callow, J.) February 27, 1948]
[Raub — Civil Suit No. 3 of 1947]

Land Code, Section 42 — Claim under resulting trust — Application of Doctrines of Equity — Laches.

In this case the plaintiff claimed that certain land registered in the name of the plaintiff's brother was in fact purchased by the plaintiff and caused to be registered in the name of his brother, as he (the plaintiff) was then in Government employ.

Held, (1) that on the facts the plaintiff had not proved that he purchased the land in the name of his brother under such circumstances as to create a resulting trust; (2) that there was nothing in the case to show that the title of the registered proprietor in this case was defeasible; (3) that the plaintiff had by his conduct barred himself from obtaining the relief he sought.

Cases referred to :—

(1) *Irvine v. Sullivan* (1869) L.R. 8 Eq. 673.

(2) *Brackenbury v. Brackenbury* (1820) 2 Jac. & W. 391.

(3) *S.A.S.P.K. Ramasamy Chetty v. Fan Seng Yew* 1 F.M.S.L.R. 354.

(4) *Dharmaratna v. Dharmaratna* (1939) 8 M.L.J. 310.

CIVIL SUIT.

H. V. Rintoul for the Plaintiff.

Second Defendant in person.

Callow, J. : — The conduct of this cause has not been easy. Mr. Rintoul for the plaintiff conducted his case with admirable propriety and restraint, but the defence with no legal aid was at a great disadvantage. There are four defendants, but only the second appeared to represent all; he was quite unversed in procedure; he admitted he was stupid and ignorant, which was undoubtedly true.

The case for the plaintiff was that in 1916 he purchased the property subject of this action, but as he was then in Government employ — he was a Forest Ranger — he caused the title to be registered in the name of his brother Ibrahim, the husband of the 4th defendant and the father of defendants 1, 2 and 3.

This was done, says the plaintiff, to circumvent regulations which forbade a Government servant to own land. The regulations were not cited, but obviously reference was to General Order 111.

In due course rubber trees were planted and the property worked. The plaintiff states he paid the annual rent.

In 1931 the plaintiff retired on pension, and in 1934 he was instrumental in causing the Power of Attorney (Exhibit G) to be executed by his brother Ibrahim in his (the plaintiff's) favour. From then until the Japanese Invasion the plaintiff worked the land, reaped the economic crops and enjoyed possession and profit.

On the 18th of June 1944 Ibrahim died. At this period the estate was not being worked, but on Re-occupation the deceased's sons commenced to rehabilitate the property claiming title as beneficiaries of the late Ibrahim.

The consequences are this action. The plaintiff maintains that in 1916 he purchased in the same manner another piece of land, lot 842, which he caused to be registered in the name of another brother Ismail. On Ismail's death about 1939 a situation similar to the one in question arose, but the beneficiaries realised the plaintiff's rightful claim and did not resist the transfer to him of lot 842.

The plaintiff further relies on the fact that he has always retained in his possession the certificate of title Exhibit C (of necessity changed in exercise of Ordinance 36/46 to No. 2,322, Exhibit B); that he drew from Government the coupons under the Rubber Supervision Enactment; that he held the licence to store, Exhibit N; that the actual words of the Power of Attorney include powers of sale; and that he, not Ibrahim the registered owner, was prosecuted in 1938 for illegal planting.

The defence is a denial of the resulting trust. The second defendant says the land belonged to his late father, and it is claimed by the defendant beneficiaries.

Clearly the plaintiff must prove strictly his claim, and adduce such preponderance of evidence as would entitle him to judgment. It is a *prima facie* presumption (but rebuttable) that a purchaser intended the grantee to take beneficially (9th Ed. *Underhill's* Law of Trusts and Trustees page 169).

In the first place there is no evidence beyond the plaintiff himself as to the creation of this resulting trust. According to his evidence he caused the land to be registered in the name of Ibrahim so as to evade General Order 111, can he now invoke the aid of the Court to enable him to enjoy the fruits of an undertaking he embarked upon clandestinely in disobedience of his terms of Government employment?

Mr. Rintoul argued that proof of the trust by parole evidence was admissible, and to this I agree (11th Ed. *Lewin's* Law of Trusts page 183), but it must be very definite. Here the Court is left with the bare assertion of the plaintiff.

I have borne in mind the evidence concerning the other piece of land No. 842, but more is necessary than conclusion by analogy. It may even be due to persuasive powers that plot 842 was transferred to the plaintiff on the death of the elder brother Mohamed Ismail.

Now if the plaintiff's version is true why in 1934, three years after he retired, at a time when he had no duty or restriction or prohibition to prevent the transfer of the property to his own name, did he go to the trouble and expense of subscribing to a Power of Attorney to enable him to manage land he claims as his own property? Is it credible and reasonable? The plaintiff said that a transfer could have been effected without difficulty, and if the deceased Ibrahim was in fact the plaintiff's trustee why was not this done?

Then, by the plaintiff's own evidence, from 1916 to 1934, he was content to pay the rent but derive no benefit from the economic crops. He admitted that rubber was obtained from 1922 onwards, but although he paid the rent, his deceased brother Ibrahim sold the rubber and enjoyed the profits. It does not sound reasonable to me.

Then from 1934 to the Japanese Invasion the plaintiff worked the land. The second defendant said the arrangement was partly on account of his father's ill-health. The family must have then been minors, and according to the schedule of property set out in the Letters of Administration (Exhibit R) the land in question formed the major part of the property worked by the deceased Ibrahim.

Now Ibrahim died on the 18th of June 1944, and would it not be expected that then the plaintiff would take some action to secure the property now claimed? Apparently the sons of Ibrahim commenced to rehabilitate the estate when opportunity arose, and in 1946 they paid the rent (Exhibit Q). Why defer this claim until 1st March 1947?

Considering the case as a whole I am not satisfied that the plaintiff has shown such preponderance of evidence as to satisfy me of purchase of the land in 1916 in the name of his brother Ibrahim under such circumstances as to create a resulting trust.

But even if the plaintiff had so satisfied me, I do not find he could have avoided section 42 of the Land Code. Mr. Rintoul contended that a passage in *McCabe Reay's* digest supported his argument, but unfortunately it cannot be produced. The case of *Irvine v. Sullivan*[1] seems against him. I appreciate the fact that General Orders are not law, but they contain terms binding upon those who accept service under Government. To do an act in avoidance of such terms is certainly irregular, and this case appears to some extent comparable with *Brackenbury v. Brackenbury*[2]. In the case of *S.A.S.P.K. Ramasamy Chetty v. Fan Seng Yew*[3] Innes, J. puts my feelings in better words when he said at pages 356/7 "If English doctrines of equity are to be invoked for the purpose of putting persons who have not complied with the law in the same position as those who have done so it seems to me that the clear intention of the Legislature will be nullified. These Courts have consistently, except in a few cases where it has been a question of preventing fraud, refused to engraft upon the plainly worded local law of registration English equitable doctrines for the purpose of relaxing the stringency of the law." *Dharmaratna v. Dharmaratna*[4] shows how difficult it is for a plaintiff to succeed; I cannot find it possible to grant the aid of this Court to the plaintiff so that he can obtain this property alleged by him to have been purchased in the name of another in order to defeat the requirements of General Orders made for the better administration of this country. The title of the land was in the name of the plaintiff's brother Ibrahim, and the argument and evidence before me have not shown such title to be defeasible.

Lastly there is the doctrine of laches. Mr. Rintoul submitted that paragraph 17 on page 185 of *Lewin*, 11th Ed., supported the plaintiff. The paragraph reads :—

> The real purchaser may be barred of his interest by laches, for the presumption of a resulting trust will not be raised, after a great length of time, more particularly if it be in opposition to the evidence afforded by the actual enjoyment.

By the plaintiff's testimony he derived no profit from the land from 1916 to 1934. He said he paid

the rent during the period; I saw no receipts or other evidence of any payments. Nor was I shown any documentary evidence of transaction of any kind in respect of the land from 1934 to the time of the Japanese Invasion. During this period the plaintiff undertook by the Power of Attorney (Exhibit G) "to keep a true account of the revenue and expenditure in respect of the land". The evidence is that for the greater portion of the years from 1916 to 1947 the defendants' family enjoyed the land. How the plaintiff came to pay the rent and derive no benefit seems inexplicable — if indeed he did so pay throughout the whole period.

For 18 years the plaintiff admits he derived nothing from the land while the defendants' family tapped and sold the rubber from 1922 onwards. Then in 1934 the plaintiff obtains the Power of Attorney (Exhibit G) which requires him to manage the land he now claims was his property at that time. Then after the death of his brother Ibrahim in 1944 he takes no step in regard to the land until the issue of this summons in 1947.

In my view the plaintiff has by his conduct in standing by and particularly in accepting the Power of Attorney Exhibit G barred himself from obtaining the relief he seeks.

The plaintiff's claim is dismissed with costs in favour of the defendants.

It follows that the interim injunction granted on the 12th of May 1947 is dissolved.

The exhibits are to be returned to the parties tendering them.

Claim Dismissed.

RE CHEW AH SANG DECEASED. CHEW KIM WAH v. HO KIM EE AND OTHERS.

[Orig. Civil Juris. (Bostock Hill, J.) March 11, 1948]
[Penang — Orig. Summons No. 215 of 1947]

Will — Construction — Direction to spend income on yearly ceremonies according to Chinese customs — Uncertainty.

Clause 7 of the Will of Chew Ah Sang deceased read "I direct my executors to pay out of the income of my estate all outgoings including the usual sums of money to be spent on yearly ceremonies according to Chinese custom". One of the questions raised in this Clause 7 was whether this direction is valid in law.

Held, that the direction is not valid in law and fails by reason of uncertainty.

Cases referred to:—

(1) *In the Matter of the Estate of Khoo Cheng Teow, deceased* (1932) S.S.L.R. 226.

(2) *Cheang Thye Phin v. Lim Ah Chen and others* Originating Summons 361/1912 unreported.

ORIGINATING SUMMONS.

C. D. Hogan for the Plaintiff.

Lim Cheng Ean for the Defendants.

Bostock-Hill, J.: — This Originating Summons asked for certain relief and for the determination of a number of points arising out of the construction of the Will of Chew Ah Sang deceased.

At this particular hearing only the questions of construction were dealt with.

There were 6 "questions" for determination. *Questions 1 and 2* were answered in the affirmative and oral judgments were given. *Questions 3, 4 and 5,* in view of the findings in Questions 1 and 2, did not arise. There remained therefore only *Question 6.*

This Question was as follows:—

> Whether the direction to the Executors to pay out of the income of the estate the usual sums of money to be spent on yearly ceremonies according to Chinese custom is valid in law.

This direction was contained in Clause 7 of the Will, which reads as follows:—

> I direct my executors to pay out of the income of my estate all outgoings including the usual sums of money to be spent on yearly ceremonies according to Chinese custom.

Mr. Hogan (for the Plaintiff) submitted that the direction is bad for vagueness and also offends against the Rule against Perpetuities.

Mr. Cheng Ean (for both Defendants) agreed that it was bad for vagueness. He stated that "yearly ceremonies" was too vague to be given effect to, though on the Perpetuities question it might be argued from the whole will that "the usual sums of money" were only to be paid out until the estate was distributed on the testator's grandson attaining the age of 21 years and that thus the direction does not offend against the Rule against Perpetuities.

I am of opinion that Mr. Cheng Ean was correct and that the direction did not offend against the Perpetuities Rule, but I think the direction fails by reason of uncertainty.

This view is supported by the judgment of Terrell, J. in *In the Matter of the Estate of Khoo Cheng Teow, deceased*[1]. At page 229 of his Judgment the learned Judge refers to an unreported Penang case *Cheang*